

§ 120.5

to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The nature, function, and capability of the article;

(ii) The nature of controls imposed by other nations on such items (including COCOM and other multilateral controls), and

(iii) That items described on the COCOM Industrial List shall not be designated defense articles or defense services unless the failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.

(e) The Office of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Office of Defense Trade Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Center for Defense Trade that this determination be given expedited processing.

(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Director of the Center for Defense Trade. The Center for Defense Trade will provide a written response of the Director's determination within 30 days of receipt of the appeal. If desired, an appeal of the Director's decision can then be made directly to the Assistant Secretary for Politico-Military Affairs.

§ 120.5 Relation to regulations of other agencies.

If an article or service is covered by the U.S. Munitions List, its export is regulated by the Department of State, except as indicated otherwise in this subchapter. For the relationship of this subchapter to regulations of the Department of Commerce, the Department of Energy and the Nuclear Regulatory Commission, see §123.20 of this

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subchapter. The Treasury Department controls permanent imports of articles and services covered by the U.S. Munitions Import List from foreign countries by persons subject to U.S. jurisdiction (31 CFR part 505). The Department of Commerce regulates the export of items on the Commerce Control List (CCL) under the Export Administration Regulations (15 CFR parts 768–799).

§ 120.6 Defense article.

Defense article means any item or technical data designated in §121.1 of this subchapter. The policy described in §120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in §121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions.

§ 120.7 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Significant military equipment includes:

(1) Items in §121.1 of this subchapter which are preceded by an asterisk; and

(2) All classified articles enumerated in §121.1 of this subchapter.

[58 FR 39283, July 22, 1993, as amended at 62 FR 67275, Dec. 24, 1997]

§ 120.8 Major defense equipment.

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note), *major defense equipment* means any item of significant military equipment (as defined in §120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.

§ 120.9 Defense service.

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad